



State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Nonphysician Medical Practitioners (NMPs), DHCS-06-017

PUBLIC PROCEEDINGS: Notice is hereby given that the Department of Health Care Services (Department) will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The California State Medicaid program, Medi-Cal, is authorized under Title XIX of the federal Social Security Act and is jointly funded by the state and federal governments. Medi-Cal is administered by the Department. Health care providers licensed under applicable provisions of the Business and Professions (B&P) Code who also meet Medi-Cal statutory and regulatory requirements may be enrolled as “Medi-Cal providers” by the Department, pursuant to Welfare and Institutions (W&I) Code Section 14043.15. Among the health care providers who may be enrolled as Medi-Cal providers are Nonphysician Medical Practitioners (NMPs). NMPs include Nurse Midwives (NMs), Nurse Practitioners (NPs), and Physician Assistants (PAs).

Medi-Cal providers, including NMs, NPs and PAs are mandated to practice within the scope and standards of practice of and in accordance with applicable professional licensing statutes and regulations, pursuant to the Medical Practice Act, Nursing Practice Act, and Physician Assistant Practice Act, set forth in B&P Code Sections 2000 et seq.; 2700 et seq; and 3500 et seq., respectively, and implementing regulations under Title 16, Division 2, California Code of Regulations (CCR), and in accordance with the authority and jurisdiction of the applicable licensing boards.

The amendments proposed through this regulatory action will maintain the scope and standards of practice for Medi-Cal NMPs in the appropriate location, under each provider’s applicable professional licensing statutes and regulations, as described above. This will eliminate impermissible conflict with and unnecessary duplication of provisions under the B&P Code; Title 16, CCR, Division 2; and Title 22, CCR, Division 3. This will also avoid the need to revise these regulations when the scope or standards of practice for these providers change through B&P Code and/or Title 16 changes.

The changes proposed to Title 22, CCR Sections 51240, 51305 and 51476 include:

- The addition of cross references to applicable professional licensing statutes and regulations.
- The removal of outdated regulatory provisions and those that are duplicative of standards already set forth in applicable NMP professional licensing statutes and regulations.
- The correction of typographical errors.

AUTHORITY: Section 20, Health and Safety Code; and Sections 10725, 14043.15, 14105 and 14124.5, Welfare and Institutions Code.

REFERENCE: Sections 14043, 14043.1, 14043.2, 14043.47, 14043.341, 14053, 14059, 14059.5, 14060, 14105.35, 14107, 14124.1, 14124.2, 14132, 14132.4, 14132.41, 14132.42, 14132.6, 14132.966, 14133, 14133.25, 14133.3 and 14170, Welfare and Institutions Code; and Title 42, Code of Federal Regulations, Sections 483.40(e) and 485.631(b)(iv).

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on February 17, 2012, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413; or
2. By hand-delivery to the Office of Regulations, Department of Health Care Services, 1501 Capitol Avenue, Suite 5084, Sacramento, CA 95814; or
3. By fax transmission: (916) 440-5748; or
4. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS-06-017" in the subject line to facilitate timely identification and review of the comment).

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Janice Spitzer of the Benefits Analysis Section at (916) 552-9633.

All other inquiries concerning the action described in this notice may be directed to Ben Carranco of the Office of Regulations, at (916) 440-7766, or to the designated backup contact person, Lynette Cordell, at (916) 650-6827.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-06-017.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the Decisions Pending and Opportunity for Public Participation link (from the left menu), then selecting the Proposed Regulations link.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: None
- C. Fiscal Effect on Federal Funding of State Programs: None
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a

representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None

DETERMINATIONS: The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

Medi-Cal is a voluntary program for both service providers and beneficiaries. This proposed regulatory action will affect only those businesses that utilize the services of NMPs who provide services under the Medi-Cal program.

The Department has determined that the regulations would affect small businesses since some Medi-Cal providers meet the criteria for small business. Medi-Cal is a voluntary program for both service providers and beneficiaries. Therefore, only those businesses that choose to be Medi-Cal providers and elect to use NMPs would be affected by these regulations.

The Department has determined that the proposed regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No public hearing has been scheduled; however, any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, or computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading or writing assistance. To request these assistive services, please write or call: Harry Cockcroft, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413; voice (916) 440-7695 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

DHCS-06-017

Dated: December, 12 2011

DEPARTMENT OF HEALTH CARE SERVICES

Originally Signed

Toby Douglas
Director